

Assembly Bill No. 594

CHAPTER 410

An act to amend Sections 1812.622, 1812.623, 1812.624, 1812.632, and 1812.644 of the Civil Code, relating to personal property.

[Approved by Governor September 22, 2006. Filed with
Secretary of State September 22, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 594, Karnette. Personal property: rental-purchase agreements.

(1) Existing law defines and regulates the terms of personal property rental-purchase agreements. Existing law requires that the lessor in a rental-purchase agreement maintain records that establish that the price disclosed as the cash price of the rental property is the same as the cash price required by law. Existing law specifies certain items that may be evidence of the cash price of new rental property for these purposes. Existing law provides that any willful violation of these provisions is a misdemeanor.

This bill would revise and recast provisions relating to personal property rental-purchase agreements. The bill would redefine "cash price" for these purposes and would establish definitions of "lessor's cost" and "total of payments," among others. The bill would revise disclosures contained in rental-purchase agreements and add new provisions that would be prohibited from appearing in these agreements. The bill would provide a consumer the right to acquire ownership of property that is the subject of a rental-purchase agreement within 3 months of the execution of the agreement by tendering a specified amount, and would require the lessor of the property to notify the consumer of this right within 10 days of executing the agreement, as specified. The bill would limit the maximum cash prices, pursuant to certain formulas, that a lessor would be permitted to charge on a first rental of property, and second and subsequent rentals, and would limit the maximum total of payments in relation to these cash price limits. The bill would also include provisions intended to make specified sections revised by the bill apply, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1812.622 of the Civil Code is amended to read:
1812.622. As used in this title:

(a) “Advertisement” means a commercial message in any medium that directly or indirectly solicits or promotes one or more specific rental-purchase transactions, excluding instore merchandising aids. This definition does not limit or alter the application of other laws, including Chapter 5 (commencing with Section 17200) of Part 2 and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code, to rental-purchase transactions.

(b) “Consumer” means a natural person or persons who rent or lease personal property from a lessor pursuant to a rental-purchase agreement or to whom a lessor offers personal property for use pursuant to a rental-purchase agreement.

(c) “Lessor” means any person or entity that provides or offers to provide personal property for use by consumers pursuant to a rental-purchase agreement.

(d) “Rental-purchase agreement,” except as otherwise provided in this subdivision, means an agreement between a lessor and a consumer pursuant to which the lessor rents or leases, for valuable consideration, personal property for use by a consumer for personal, family, or household purposes for an initial term not exceeding four months that may be renewed or otherwise extended, if under the terms of the agreement the consumer acquires an option or other legally enforceable right to become owner of the property. A rental-purchase agreement is a lease subject to Title 1.5 (commencing with Section 1750) and Title 1.7 (commencing with Section 1790).

“Rental-purchase agreement” shall not be construed to be, nor be governed by, and shall not apply to, any of the following:

- (1) A retail installment sale, as defined in Section 1802.5.
- (2) A retail installment contract, as defined in Section 1802.6.
- (3) A retail installment account, as defined in Section 1802.7.
- (4) A lease or agreement that constitutes a security interest, as defined in Section 1201 of the Commercial Code.

- (5) A consumer credit contract, as defined in Section 1799.90.

(e) “Cash price” means the price of the personal property described in the rental-purchase agreement that the consumer may pay in cash to the lessor at the inception of the rental-purchase agreement to acquire ownership of that personal property.

(f) “Cost of rental” means the difference between the total of all periodic payments necessary to acquire ownership under the rental-purchase agreement and the cash price of the rental property that is subject to the rental-purchase agreement.

(g) “Fee” means any payment, charge, fee, cost, or expense, however denominated, other than a rental payment.

(h) “Appliance” means and includes any refrigerator, freezer, range including any cooktop or oven, microwave oven, washer, dryer, dishwasher, or room air conditioner or air purifier.

(i) “Electronic set” means and includes any television, radio, camera, video game, or any type of device for the recording, storage, copying, printing, transmission, display, or playback of any sound or image, but does not include any item that is part of a computer system.

(j) “Computer system” means a computer processor and a video monitor, printer, and peripheral items primarily designed for use with a computer. Audio and video devices, which are commonly used for entertainment and into which data may be downloaded from a computer, are not part of a computer system.

(k) “Lessor’s cost” means the documented actual cost, including actual freight charges, of the rental property to the lessor from a wholesaler, distributor, supplier, or manufacturer and net of any discounts, rebates, and incentives.

(l) “Total of payments” means the total amount of periodic payments necessary to acquire ownership of the property that is the subject of the rental-purchase agreement if the consumer makes all regularly scheduled payments.

SEC. 2. Section 1812.623 of the Civil Code is amended to read:

1812.623. (a) Every rental-purchase agreement shall be contained in a single document which shall set forth all of the agreements of the lessor and the consumer with respect to the rights and obligations of each party. Every rental-purchase agreement shall be written in at least 10-point type in the same language as principally used in any oral sales presentation or negotiations leading to the execution of the agreement, and shall clearly and conspicuously disclose all of the following:

(1) The names of the lessor and the consumer, the lessor’s business address and telephone number, the consumer’s address, the date on which the agreement is executed, and a description of the property sufficient to identify it.

(2) Whether the property subject to the rental-purchase agreement is new or used. If the property is new, the lessor shall disclose the model year or, if the model year is not known by the lessor, the date of the lessor’s acquisition of the property. If the property is used, the age or the model year shall be disclosed if known by the lessor.

(3) The minimum period for which the consumer is obligated under the rental-purchase agreement; the duration of the rental-purchase agreement if all regularly scheduled periodic payments are made, designated as the “rental period”; and the amount of each periodic payment.

(4) The total of payments and the total number of periodic payments necessary to acquire ownership of the property if the renter makes all regularly scheduled periodic payments.

(5) The cash price of the property subject to the rental purchase agreement.

(6) The cost of rental.

(7) The amount and purpose of any other payment or fee permitted by this title in addition to those specified pursuant to paragraphs (3) and (4), including any late payment fee.

(8) A statement that the total number and dollar amount of payments necessary to acquire ownership of the rental property disclosed under paragraph (4) does not include other fees permitted by this title, such as late payment fees, and that the consumer should read the rental-purchase agreement for an explanation of any applicable additional fees.

(9) Whether the consumer is liable for loss or damage to the rental property and, if so, the maximum amount for which the consumer may be liable as provided in subdivision (a) of Section 1812.627.

(10) The following notice:

NOTICE

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you use the early purchase option.

You do not have the right to keep the property if you do not make required payments or do not use the early purchase option. If you miss a payment, the lessor can repossess the property, but, you may have the right to the return of the same or similar property.

See the contract for an explanation of your rights.

(11) A description of the consumer's right to acquire ownership of the property before the end of the rental period as provided in subdivisions (a) and (b) of Section 1812.632.

(12) A description of the consumer's reinstatement rights as provided in Section 1812.631.

(13) If warranty coverage is transferable to a consumer who acquires ownership of the property, a statement that the unexpired portion of all warranties provided by the manufacturer, distributor, or seller of the property that is the subject of the rental-purchase agreement will be transferred by the lessor to the consumer at the time the consumer acquires ownership of the property from the lessor.

(14) A description of the lessor's obligation to maintain the rental property and to repair or replace rental property that is not operating properly, as provided in Section 1812.633.

(b) (1) The disclosures required by paragraphs (3), (4), (5), and (6) of subdivision (a) shall be printed in at least 10-point boldface type or capital letters if typed and shall be grouped together in a box formed by a heavy line in the following form:

TOTAL OF PAYMENTS	COST OF RENTAL	CASH PRICE	
\$	\$ Amount over cash price you will pay if you make all regular payments.	\$ Property available at this price for cash from the lessor. See about your early purchase option rights.	
You must pay this amount to own the property if you make all the regular payments. You can buy the property for less under the early purchase option.	AMOUNT OF EACH PAYMENT	NUMBER OF PAYMENTS	RENTAL PERIOD
	\$ per _____ (insert period)		

(2) The box described in paragraph (1) shall appear immediately above the space reserved for the buyer's signature.

(c) The disclosures required by paragraphs (3), (4), (5), and (6) of subdivision (a) shall be grouped together in a box formed by a heavy line in the form prescribed in subdivision (b) and shall be clearly and conspicuously placed on a tag or sticker affixed to the property available for rental-purchase. If the property available for rental-purchase is not displayed at the lessor's place of business but appears in a photograph or catalog shown to consumers, a tag or sticker shall be affixed to the photograph of the property or catalog shown to consumers or shall be given to consumers. The disclosure required by paragraph (2) of subdivision (a) also shall be clearly and conspicuously placed on the tag or sticker.

(d) All disclosures required by this section shall be printed or typed in a color or shade that clearly contrasts with the background.

SEC. 3. Section 1812.624 of the Civil Code is amended to read:

1812.624. (a) No rental-purchase agreement or any document that the lessor requests the consumer to sign shall contain any provision by which:

(1) A power of attorney is given to confess judgment in this state or to appoint the lessor, its agents, or its successors in interest as the consumer's agent in the collection of payments or the repossession of the rental property.

(2) The consumer authorizes the lessor or its agent to commit any breach of the peace in repossessing the rental property or to enter the consumer's dwelling or other premises without obtaining the consumer's consent at the time of entry.

(3) The consumer agrees to purchase from the lessor insurance or a liability waiver against loss or damage to the rental property.

(4) The consumer waives or agrees to waive any defense, counterclaim, or right the consumer may have against the lessor, its agent, or its successor in interest.

(5) The consumer is required to pay any fee in connection with reinstatement except as provided in Section 1812.631.

(6) The consumer is required to pay a fee in connection with the pickup of the property or the termination or rescission of the rental-purchase agreement.

(7) The consumer is required to pay any fee permitted by the rental-purchase agreement and this title that is not reasonable and actually incurred by the lessor. The lessor has the burden of proof to establish that a fee was reasonable and was an actual cost incurred by the lessor.

(8) The consumer is required to pay a downpayment, more than one advance periodic rental payment, or any other payment except a security deposit permitted under Section 1812.625.

(9) Except to the extent permitted by subdivision (b) of Section 1812.627, the consumer waives any rights under Sections 1928 or 1929.

(10) The consumer grants a security interest in any property.

(11) The consumer's liability for loss or damage to the property which is the subject of the rental-purchase agreement may exceed the maximum described in subdivision (a) of Section 1812.627.

(12) Except under the circumstances authorized by subdivision (a) or (b) of Section 1812.632, the consumer is obligated to make any balloon payment. A "balloon payment" is any payment for the purchase or use of the rental property which is more than the regularly scheduled periodic payment amount.

(13) The consumer is required to pay a late payment fee that is not permitted under Section 1812.626.

(14) The consumer is required to pay both a late payment fee and a fee for the lessor's collection of a past due payment at the consumer's home or other location.

(15) The consumer waives or offers to waive any right or remedy against the lessor, its agents, or its successors in interest for any violation of this title or any other illegal act. This subdivision does not apply to a document executed in connection with the bona fide settlement, compromise, or release of a specific disputed claim.

(16) The lessor, its agents, or its successors in interest may commence any judicial action against the consumer in a county other than the county in which (A) the rental-purchase agreement was signed or (B) the consumer resides at the time the action is commenced.

(17) The amount stated as the cash price for any item of personal property exceeds the cash price permitted under Section 1812.644.

(18) The total of payments exceeds the amount permitted under Section 1812.644.

(b) Any provision in a rental-purchase agreement that is prohibited by this title shall be void and unenforceable and a violation of this title. A rental-purchase agreement which contains any provision that is prohibited by this title is voidable by the consumer.

SEC. 4. Section 1812.632 of the Civil Code is amended to read:

1812.632. (a) (1) The consumer has the right to acquire ownership of the property within three months of the date on which the consumer executed the rental-purchase agreement by tendering to the lessor an amount equal to the cash price and any past due fees less all periodic payments that the consumer has paid.

(2) Within 10 days after the consumer executes the rental purchase agreement, the lessor shall personally deliver or send by first-class mail to the consumer a notice informing the consumer of the right described in paragraph (1), including the amount the consumer must pay to acquire ownership and the date by which payment must be made. The statement shall not be accompanied by any other written information including solicitations for other rental-purchase agreements.

(b) After the expiration of the three-month period following the execution of the rental-purchase agreement, the consumer has the right to acquire ownership of the property at any time by tendering to the lessor all past due payments and fees and an amount equal to the cash price stated in the rental-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments.

(c) (1) The lessor shall, in connection with a consumer's rights under subdivision (b), provide the consumer with a written statement in the manner set forth in paragraph (2) below that clearly states (A) the total amount the consumer would have to pay to acquire ownership of the rental property if the consumer makes all regularly scheduled payments remaining under the rental-purchase agreement and (B) the total amount the consumer would have to pay to acquire ownership of that property pursuant to subdivision (a).

(2) The statement required by paragraph (1) shall be personally delivered or sent by first-class mail to the consumer within seven days after (A) the date the consumer requests information about the amount required to purchase the rental property and (B) the date the consumer has made one-half of the total number of periodic payments required to acquire ownership of the rental property. The statement shall not be accompanied by any other written information including solicitations for other rental-purchase agreements.

(d) (1) Subject to paragraph (2), if any consumer who has signed the rental-purchase agreement has experienced an interruption or reduction of 25 percent or more of income due to involuntary job loss, involuntary reduced employment, illness, pregnancy, or disability after one-half or more of the total amount of the periodic payments necessary to acquire ownership under the agreement has been paid, the lessor shall reduce the

amount of each periodic rental payment by (A) the percentage of the reduction in the consumer's income or (B) 50 percent, whichever is less, for the period during which the consumer's income is interrupted or reduced. If payments are reduced, the total dollar amount of payments necessary to acquire ownership shall not be increased, and the rights and duties of the lessor and the consumer shall not otherwise be affected. When the consumer's income is restored, the lessor may increase the amount of rental payments, but in no event shall rental payments exceed the originally scheduled amount of rental payments.

(2) Paragraph (1) applies only after the consumer provides to the lessor some evidence of the amount and cause of the interruption or reduction of income.

SEC. 5. Section 1812.644 of the Civil Code is amended to read:

1812.644. (a) A lessor shall maintain records that establish the lessor's cost, as defined in subdivision (k) of Section 1812.622, for each item of personal property that is the subject of the rental-purchase agreement. A copy of each rental-purchase agreement and of the records required by this subdivision shall be maintained for two years following the termination of the agreement.

(b) The maximum cash price for the lessor's first rental of the property that is the subject of the rental-purchase agreement may not exceed 1.65 times the lessor's cost for computer systems and appliances, 1.7 times the lessor's cost for electronic sets, 1.9 times the lessor's cost for automotive accessories, furniture, jewelry, and musical instruments, and 1.65 times the lessor's cost for all other items.

(c) The maximum total of payments may not exceed 2.25 times the maximum cash price that could have been charged for the first rental of the property under subdivision (b).

(d) The maximum total of payments for the lessor's second and subsequent rental of the property that is the subject of the rental-purchase agreement may not exceed the maximum total of payments permitted under subdivision (c) for the first rental of that property less (1) for appliances and electronic sets, one-third the amount of all rental payments paid to the lessor by consumers who previously rented that property or (2) for furniture, computer systems, and all other items, one-half the amount of all rental payments paid to the lessor by consumers who previously rented that property.

(e) The maximum cash price for property on its second or subsequent rental may not exceed the maximum total of payments for that property as permitted under subdivision (d) divided by 2.25.

(f) Upon the written request of the Attorney General, any district attorney or city attorney, or the Director of the Department of Consumer Affairs, a lessor shall provide copies of the records described in this section.

(g) If a lessor willfully discloses a cash price or a total of payments that exceeds the amount permitted by this section, the rental-purchase

agreement is void, the consumer shall retain the property without any obligation, and the lessor shall refund to the consumer all amounts paid.

SEC. 6. On and after June 1, 2006 to December 31, 2006, inclusive, a lessor may comply with Sections 1812.622, 1812.623, 1812.624, 1812.632, and 1812.644 of the Civil Code as amended by this act in lieu of complying with those sections as they were in effect before the effective date of this act without incurring any liability for doing so.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.